IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 5219 of 1998

Between:

1 Seelam Madhu Anuradha W/o Divakar Babu
R/o Rajahmundry , E.G District.
2 Emani Indira Kumari W/o Ch.S.Gandhi
R/o Rajahmundry , E.G District.
3 Kanaka Durga w/o Sundaram
R/o Rajahmundry , E.G District.
4 Karupothu Vijayalalitha W/o P.Charles Bhushanam
R/o Rajahmundry , E.G District.
5 Bonthu Vijaya Jyothi W/o B.George Addison
R/o Rajahmundry , E.G District.
6 Manjulatha Sharma W/o Ramavathar Sharma
R/o Rajahmundry , E.G District.
7 Alanqat Pushpa Rajan W/o N.Rajan
R/o Rajahmundry , E.G District.
8 M.Shoba RAni W/o Daniel
R/o Rajahmundry , E.G District.
9 Marry Mary Lilly Aqnes W/o R.Winston Churchill
R/o Rajahmundry , E.G District.
10 Godugu Salomi Sujatha D/o G.SAmuel
R/o Rajahmundry , E.G District.
11 Bonthu Krupa Kezia W/o K.Elisha Melanqton
R/o Rajahmundry , E.G District.
12 Sarella Dyva Prasanna W/o B.Nirmala Rao
R/o Rajahmundry , E.G District.

..... PETITIONERS

AND

1 The Commissioner and Director School Education Hyderabad
2 The regional Joint Director School Education
Rajahmundry , E.G District

3 District Educational Officer
Kakinada E.G District
4 A.P.PMills Model High School rep by Secretary & Correspondent
Rajahmundry, E.G District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order one in the nature of the writ of mandamus , directing the respondents not to interfere with the posts held by the petitioners in any manner in view of the fact that they are duly selected by following due process which appointments are deemed to have been ratified under Rule 15(4)(A) of Establishments of Schools under GOMs. 524 Education dt 20-12-88 and "to call for the connected records including the impugned proceedings of the 2nd respondent in L.Dis.No.388/A2//96, dt.16.8.1996 and declare the same as illegal, improper, unjust, arbitrary and contrary to law and further direct the 2nd respondent to approve the appointments of the petitioners with all consequential benefits with effect from the date on which the 4th respondent submitted the proposal and pass such other order," other wise the petitioners will suffer serious hardship.

(Prayer amended as per the Order dated 17-09-2004 in W.P.M.P.No.4114 of 2004)

Counsel for the Petitioner:MR.K.G.KRISHNA MURTHY

Counsel for the Respondents 1 to 3.: GP FOR SCHOOL EDUCATION

Counsel for Respondent No.4: MR. V. VENKATESH

The Court made the following :

ORDER:

Petitioners, 11 in number, filed the present writ petition. Out of them, according to the learned counsel for the petitioners, petitioners 5,7,8,10 and 12 are not interested in pursuing the writ petition. Therefore, the writ petition is not pressed in so far as petitioners 5,7,8,10 and 12 are concerned. Thus, the writ petition is now pursued by petitioners 1 to 4,6,9 and 11 only. Originally, when the writ petition was filed, the prayer was to issue a writ of Mandamus directing the respondents not to interfere with the posts held by the petitioners in any manner since they were appointed after subjecting to selection process and further the same has been deemed to have been ratified under Rule 12(4) of Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of the schools in the private managements) Rules 1993 (for short 'the Rules'). Thereafter, W.M.P.M.No.4114 of 2004 is filed seeking amendment of the prayer in the writ petition. Since, the amendment sought to be

modified does not alter the nature of the relief, this Court has inclined to allow the petition today i.e. on 17.09.2004. Along with the W.P.M.P. for amendment of the writ petition, a detailed better affidavit has been filed. Therefore, the facts are noted as are available in the affidavit filed in support of the amendment petition.

According to the petitioners, they were all appointed as teachers from the years 1987 to 1990 in the unaided posts in the management of the 4th respondent school. Since then, they have been discharging their duties to the complete satisfaction of the authorities and were making representations to the respondents through fourth respondent to absorb their services in the aided posts, but there was no proper

response. While the matter stood thus, the fourth respondent management after obtaining prior permission from the competent authority, issued notification dated 29.11.1994 calling for applications from the qualified persons with teaching experience in the recognized English medium schools. It was made clear that those who are holding higher qualifications would be preferred. The applications were invited from open market as well as from the employment exchange and the candidates were also asked to submit community certificates such as B.C., S.C., S.T. etc., if they belonged to any of those community. The petitioners are all graduates with B.Ed. qualifications and some are post graduates in different subjects. They have also submitted applications in pursuance of notification dated 29.11.1994 and they were directed to attend for the interview before the Staff Selection Committee on 10/11.06.1995 along with others and were subjected to written and oral examination. The Staff Selection Committee was constituted as per G.O.Ms.No.1, Education Department, dated 2.1.1994. The petitioners were selected by the committee and their names were recommended for approval of the Regional Joint Director, the second respondent herein, through the concerned District Education Officer. The rules issued in G.O.Ms.No.1, dated 2.1.1994 prescribe the procedure for appointment of teachers in Grant-in-Aid post and unaided posts. Under Rule 12 of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of the schools in the private managements) Rules 1993, the Staff Selection Committee is appointed. Under Rule 12(4) all educational institutions receiving Grant-in-Aid should notify the vacancies to employment exchange and also invite applications through notifications in the newspapers. Under Rule 12(5), the nominee of the official respondents would constitute part of the selection committee. The duly constituted selection committee conducted interviews on 10/11.06.1995 and selected the petitioners and appointment orders were issued on 12.6.1995. On 06.07.1995 proposals were submitted for approval of selection of the petitioners to the second respondent through third respondent. According to the petitioners, since the proposals were sent on 12.6.1995 and the same were not rejected within two months from the date of sending of the proposals by the management under Rule 12(8), it must be deemed that the approval has been granted and they are entitled to continue as teachers. However, on 28.10.1995 the second respondent sought for some clarification from the fourth respondent. On 16.8.1996, the competent authority-the fourth respondent rejected granting of approval in favour of the petitioners on two main grounds; firstly

on the ground that the management committed certain deviations in the selection process i.e. not following the communal roster; and the second is on the ground that the management selected only Secondary Grade Teachers without there being B.Ed. qualifications as School Assistants. It is the further contention of the learned counsel for the petitioners that even assuming that the petitioners selection was not made properly, they are entitled for regularization as per G.O.Ms.No. 301 dated 25.9.1997. It is further contended that the petitioners are working right from 1987 onwards and they all became over-aged and they will not get any employment elsewhere and they have good experience in teaching and if they are removed from employment it will not only detrimental to their service but also their rich experience in teaching would go waste.

A detailed counter affidavit has been filed on behalf of respondents 1 to 3 denying the allegations made by the petitioners.

It is stated that Rule 12(8) the deeming provision as to approval, if the proposals are not rejected within two months from the date they were sent, has no application to the case of the petitioners since they were all sought to be appointed against aided vacancies. In so far as the deviation of the selection process in not following the communal roster was concerned, when the learned counsel for the petitioner relied upon the reported judgment of a Division Bench of this Court in **GOVT OF A.P. V. P. THIRUMALA DEVI AND OTHERS** , the learned Government Pleader submitted that the subject matter was carried in further appeal before the Supreme Court and the Supreme Court has granted stay and as such the said judgment has no application to this case. In so far as selecting only Secondary Grade Teachers against School Assistants without there being requisite qualification of B.Ed. was concerned, it is an admitted by the management that the petitioners possess qualification of B.Ed. even as on the date of their original appointment into the school as Secondary Grade Teachers. Therefore, there is no necessity of going into this aspect. The learned Government Pleader further submitted that simply because the petitioners are over-aged and they had gained experience as teachers, that itself does not give any right to bypass due process of selection. In so far as the G.O.Ms.No.301 dated 25.9.1997 is concerned, the learned Government Pleader submits that the said G.O. is no longer in force and has been withdrawn by the Government.

Considering the submissions made on either side, the only question that falls for consideration is whether the deviation purported to have been made by the selection committee in not following the roster system in appointment of the petitioners, the second respondent i.e. the Regional Joint Director could have rejected the approval of the proposals submitted by the management on 6.7.1995 for appointment of the petitioners on regular basis against the posts hold by them.

In similar circumstances, this Court in the decision referred to supra at paras 26, 27 and 28 held as under:

> "The submission of the learned Advocate General to the effect that having regard to the provisions of sub-rule 2 of rule 12 read with rule 13 thereof, as recruitment is to be made through Staff Selection Committee to be constituted by the educational agency the communal roster system can be given effect to, cannot be accepted. As noticed hereinbefore, the Act separately defines 'educational agency' and 'educational institution'. The selection in relation to an educational institution or an educational agency may be made in terms of sub-rule (2) of Rule 12 read with Rule 13 thereof. But sub-rule (6) of rule 12 provides for selection of posts in all private educational institutions only.
>
> It is, therefore, not correct to contend that the purported reservation policy of the State can be implemented in relation to the institutions belonging to an educational agency. In other words, for the purpose of giving effect to sub-rule (6) of rule 12, all private educational institutions shall be treated as separate units.
>
> Furthermore, the State merely grants aid in terms of Grant-In-Aid Code. However, rule 12(6) would apply both in relation to an aided and unaided institution. The State for the purpose of implementing the reservation policy must have a power therefor.
>
> It cannot exercise such power only because it gives grant-in-aid. The reservation theory has no nexus with grant-in-aid by the State. Such a power of the State will also have to be considered having regard to the provisions contained in Article 29 read with clause (1) of Article 30 of the Constitution, in terms whereof any discrimination by the State is prohibited.

The contention of the learned Government Pleader that the Supreme Court granted Stay in the above referred case, cannot be considered since the order of the Supreme Court is applicable only to that particular case, but there cannot be any stay of principle laid down by the Division Bench in the said case. In view of the judgment of a Division Bench of this Court in **K. VENKAT REDDY V LAND ACQUISITION OFFICER** in which, it was held:

> "When a judgment of the High Court is the subject-matter of an appeal and the said judgment is suspended, the only effect of such

> suspension is that that judgment cannot be executed or implemented. But so long as the Full Bench judgment stands, the dicta laid down therein is binding on all courts including single judges and Division Benches of this Court. The dicta laid down therein cannot be ignored unless the Court after hearing a particular case doubts the correctness of the dicta and thinks it appropriate that it should be reconsidered."

I am of the opinion that the first objection taken by the second respondent for approval of the appointments of the petitioners that there was a deviation in following the communal roster is squarely covered by the above judgment (1 supra) and such an objection does not stand the scrutiny of law. In so far as the second objection is concerned, the management has fairly conceded that they selected the petitioners as they possess B.Ed. qualification even prior to their appointments into the school. Under those circumstances, the order passed by the second respondent dated 16.8.1996 rejecting the approval of appointment of the petitioners sought by the management on 6.7.1995 is arbitrary and illegal and is liable to be set aside.

The writ petition is allowed to the extent indicated above. No order as to costs.

_____ 17th September, 2004

tsr.